

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-208258

DATE: October 28, 1982

MATTER OF: Mitchell Construction Company, Inc.

DIGEST:

Where low bidder has verified a bid containing a deductive price for an additive item significantly lower than those of other bidders and there is no objective evidence, other than price disparity, suggesting bid was mistaken, contracting officer properly considered bid as originally submitted.

Mitchell Construction Company, Inc. protests the award of a contract to Site, Inc. under invitation for bids (IFB) No. N62467-82-B-4319, issued by the Navy for the rehabilitation of twenty-four duplex housing units at Parris Island, South Carolina. Mitchell's contention is that Site's bid contained an obvious error with respect to price which required the contracting officer to reject the bid. For the reasons discussed below, we deny the protest.

The IFB included one basic item (Bid Item No. 1) consisting of the entire rehabilitation work except for work required to be performed under either of two additive bid items--preparation of existing wood flooring and installation of vinyl floor tile (Bid Item No. 2) and installation of ceiling insulation (Bid Item No. 3). Award was to be made to one bidder only. In this regard, the solicitation contained the following provision:

"The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined to be available before bids are opened * * *."

The following chart indicates the prices of the four lowest bids received and the Government estimate:

	<u>Bid Item No. 1</u>	<u>Bid Item No. 2</u>
Site, Inc.	\$966,780.00	Deduct
		\$24,360.00
Mitchell Construction	947,229.00	25,300.00
Valley Construction Co.	957,247.00	26,496.00
DeRalco, Inc.	973,180.00	25,000.00
Government Estimate	1,017,247.00	19,375.00

	<u>Bid Item No. 3</u>
Site, Inc.	\$11,500.00
Mitchell Construction	\$18,200.00
Valley Construction Co.	\$15,000.00
DeRalco, Inc.	\$15,000.00
Government Estimate	\$12,590.00

The other bid prices for Bid Item No. 2 ranged from \$19,800.00 to \$57,135.00. Site's total bid of \$953,920.00 was low only because of the deductive amount which it bid for Item No. 2.

Upon receipt of the bids, the Navy noted the significant difference between the unit prices of Site and the other bidders for Bid Item No. 2 and requested that Site review and verify the amount of its intended bid. The Navy reports that Site verified its bid price with the explanation that "in estimating the work, [Site] had considered that [providing] installation of floor tile would effectively be less than the cost of repairing * * * wood floors [damaged during performance of the rehabilitation work under Bid Item No. 1]." In this regard, under Bid Item No. 1, the flooring in the dwelling units was not included in the renovation work. Further, the IFB did not contain a specific provision relating to flooring which set forth the contractor's responsibility for protecting or repairing flooring damaged during performance of the renovation work. However, under Section 02050 of the specifications, "Site Work," paragraph 1, "Demolition and Removal," the following appears:

"1.4 Protection:

1.4.1 Protection of Buildings from Damage:
Protect existing work to remain in place, to be reused, or to remain the property of the Government by temporary covers. Repair such items which are damaged during performance of the work or replace with new. Do not overload structural elements. Provide new supports or reinforcement for existing construction which is weakened by demolition or removal work."

Mitchell argues that this provision only requires the contractor to place some kind of protective covering, such as a tarp, over the flooring to protect it while the renovation work is performed. The protester then maintains that an evaluation of Site's bid shows that its explanation of the suspected mistake is so logically and economically questionable and so out of line with the other closely grouped bids received and the Government estimate that the bid should have been rejected by the contracting officer despite Site's verification.

In a lengthy analysis, the protester first observes that since there are 26,400 square feet of flooring affected, Site's "Deduct \$24,360" bid for installing vinyl asbestos tile equates to a deduction of 93 cents per square foot for this work. The other bidders added between 75 cents and \$2.16 per square foot for installing floor tile. If the purported savings of 93 cents per square foot is added to the true value of the work as reflected in the other bids, Mitchell argues, this indicates that Site calculated that it would cost between \$1.68 and \$3.09 per square foot to protect the existing flooring. The protester maintains that this amount is so out of line with the actual cost of protecting the existing flooring that it demonstrates that Site's deductive bid for Item No. 2 was an error and that the contracting officer should have rejected Site's bid despite the firm's verification of it.

Site, who has commented on Mitchell's protest as an interested party, states that it interpreted the specifications as requiring it to repair, sand and refinish the existing flooring at the conclusion of the renovation

work. Site maintains that it actually would be less expensive to cover the flooring with vinyl asbestos tile under Bid Item No. 2 than to repair, sand and refinish the flooring under Bid Item No. 1. Therefore, Site states, its deductive bid for Item No. 2 was intentional and reflected the lower cost to it of installing tile in lieu of refinishing the floors.

The Navy asserts that its request for verification and Site's confirmation and explanation of its bid were all that were required for acceptance of Site's bid, citing G.T. Murphy, Inc., B-204351, February 23, 1982, 82-1 CPD 161, and pointing to a statement from the architect who participated in the drafting of the specifications for this project and who advised the Navy's Officer in Charge of Construction as follows:

"It is conceivable that the Contractor could give the Government a deductive sum on Bid Item 2 due to the method he intends to use to accomplish the work. It is also conceivable that it would be more economical for the contractor to concentrate on completing the work as detailed and specified and not be concerned with protecting the existing floors as specified. It appears that the Contractor would rather retile the floors as per Bid Item 2 as a deductive item than have the added cost of protecting and/or repairing possible damages to the existing floors after work is complete.

"I am aware that the bid forms furnished the contractors indicated Bid Item 2 as being an additive item; however, it is my opinion that the Contractor considered it to be to his advantage to give the Government a deductive sum on that bid item as per reasons outlined above."

Murphy, supra, also involved an apparently mistaken additive item price in the low bid which was significantly lower than those of other bidders and which constituted a small portion of the total contract price. In that case, the bidder consistently maintained that its bid was without error and the record did not disclose any objective

evidence, other than the price discrepancy, which suggested that the bid was mistaken. Our Office concluded that the contracting officer properly considered the bid as originally submitted.

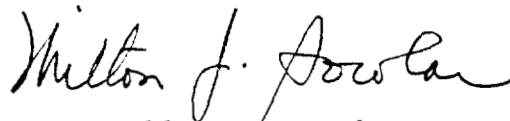
We find a similar situation exists here. We have a discrepant bid price, a proper request for verification by the contracting officer, an unequivocal verification, and an explanation which is acceptable to the agency in support of the questioned bid. Although Mitchell has sought to cast doubt on that explanation, Mitchell's analysis does not establish that a mistake had been made by Site in calculating its bid price. Rather, we think the record overall establishes only that Site interpreted the work items differently than did the other bidders. Under the circumstances, we think the contracting officer properly followed the holding in Murphy, which, unless it seems reasonably apparent that a mistake was made notwithstanding a bidder's verification of its bid, permits a contracting officer to accept a bid upon verification without requiring the bidder to prove convincingly that no mistake was made.

We note that Mitchell also argues that Site's bid permitted the prospective contractor to manipulate its competitive position after bid opening. According to Mitchell, by adding the term "deduct" before its bid for Item No. 2, Site effectively placed itself in a position of being able to allege a mistake after bid opening and thereby achieve a "swing" of \$48,720.00, assuming that its relative bid standing would not be affected by such an allegation. Alternatively, Mitchell argues, Site has also given itself the option of verifying its bid price if the allegation of mistake and the addition of \$48,720.00 to its bid price would eliminate its status as low bidder.

We recognize that so long as the procurement regulations permit correction of bids after bid opening, an unethical bidder could bid extremely low and then, upon learning its competitors' prices, declare a mistake in its bid and attempt to secure an increased award in any amount up to the second low bid by showing how the alleged error was made and the intended bid price. However, the regulatory requirement that corrections

be limited to those cases where the evidence clearly and convincingly establishes the existence of a mistake and the bid actually intended serves as a safeguard against this type of abuse. Thus, where the regulatory procedures for bid correction are strictly followed, the United States obtains the cost benefit of a corrected bid, while the high standard of proof necessary before correction is permitted protects against the potential for abuse flowing from the decision allowing correction. See John Amentas Decorators, Inc., B-190691, April 17, 1978, 78-1 CPD 294. Moreover, any false statements or representations by a bidder could be subject to the penalty provisions prescribed in 18 U.S.C. § 1001 (1976). See Hoyer Construction Co., Inc., B-187042, September 29, 1976, 76-2 CPD 296.

In light of our conclusions above, the protest is denied. We are pointing out to the Secretary of the Navy, however, that the dispute in this case arose because the specifications for the procurement were ambiguous. That ambiguity was not fatal here, but under other circumstances could have resulted in the evaluation of bids which had not been computed on a common basis (as would have been the case if award were made only for Item No. 1). We are recommending that the ambiguity be eliminated from future solicitations.



Acting Comptroller General
of the United States